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Before the
Federal Communications Commission
Washington, D.C. 20554

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AUG 27 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Parts 2.106 and 25.202)
of the Commission's Rules to Permit)
Operation of NGSO FSS Systems) RM No. 9147
Co-Frequency with GSO and Terrestrial)
Systems in the 10.7-12.7 GHz,)
12.75-13.25 GHz, 13.75-14.5 GHz, and)
17.3-17.8 GHz Bands, and to Establish)
Technical Rules Governing NGSO FSS)
Operations in these Bands)

COMMENTS ON PETITION FOR RULEMAKING

Home Box Office, a Division of Time Warner Entertainment Company, L.P.
("HBO"), hereby submits its comments on the above-captioned Skybridge L.L.C.
("Skybridge") petition to amend Parts 2.106 and 25.202 of the Commission's rules.
Skybridge seeks the amendments to permit non-geostationary orbit ("NGSO") Fixed-Satellite Service ("FSS") systems to operate in the United States co-frequency with geostationary orbit ("GSO") satellites (both FSS and Broadcast-Satellite Service ("BSS")) and with terrestrial systems in the 10.7-12.7 GHz, 12.75-13.25 GHz, 13.75-14.5 GHz, and 17.3-17.8 GHz bands, and to establish technical rules governing NGSO FSS operations in these bands.

HBO's premium video services, HBO and Cinemax, are delivered to several million direct-to-home ("DTH") satellite subscribers who receive HBO's service over

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FSS and BSS satellites that could be affected by Skybridge's proposals. Specifically, six channels of HBO and Cinemax are delivered over the FSS Ku-band satellite used by PRIMESTAR Partners L.P., ten channels of HBO and Cinemax are delivered over the BSS satellite facilities licensed to United States Satellite Broadcasting Company, Inc., and nine channels of HBO and Cinemax are delivered to subscribers via BSS satellites licensed to Echostar Satellite Corporation and its affiliates. Because of HBO's reliance on Ku-Band FSS and BSS satellites, it is concerned about proposals, such as Skybridge's, that could, if implemented, result in interference with satellites used by distributors of HBO's programming services and cause dissatisfaction by HBO's subscribers.

In its petition, Skybridge asserts that its proposed Skybridge system of low earth orbit satellites is capable of operating co-frequency with GSO and terrestrial users without causing interference. More specifically, Skybridge claims that NGSO FSS systems, such as the one it proposes, operating in the identified bands will cause no "noticeable degradation" to the quality of service or availability of GSO and terrestrial communications links and impose no operational constraints on GSO and terrestrial operators. As a part of its initial application and in a subsequent amendment, Skybridge submitted several appendices containing its technical findings and specifications regarding the Skybridge NGSO satellite system and its potential effects upon other GSO satellites. Based on these appendices, Skybridge asserts that its NGSO system does "not pose any threat of interference" to GSO and terrestrial systems.

In HBO's view, the initiation of a rulemaking proceeding to address the frequency sharing issue raised by Skybridge is premature. The technology proposed by Skybridge to achieve NGSO/GSO satellite frequency sharing so far is theoretical. It apparently has not undergone any rigorous analysis by the GSO satellite industry, and there is no indication that the technology has been tested in an operational environment. Instead of the Commission launching a rulemaking proceeding now, HBO submits that Skybridge and the potentially affected members of the GSO satellite industry should engage in further dialogue, analysis and tests to determine if a consensus can be developed to permit the frequency sharing that Skybridge requests. Only after more is known and understood regarding how the proposed Skybridge frequency sharing plan would work in practice, can the Commission legitimately propose rules to protect the interests of Ku-Band FSS and BSS satellite operators and users. ¹

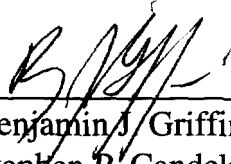
¹ On numerous occasions, the Commission has dismissed petitions for rulemaking as premature under Section 1.401(e) of its rules (47 C.F.R. § 401(e)). Many of these instances have involved situations where a service or technology had not been sufficiently developed. *See, e.g., In the Matter of Amendment of the Commission's Rules to Provide Ancillary Services in the 849-851 and 894-896 MHz Bands*, 8 FCC Rcd 3920 (1993) (dismissing without prejudice petition finding that the Air-Ground Service had not had an opportunity to mature sufficiently to permit reliable analysis of whether there will be sufficient spectrum in the identified bands to support ancillary services in addition to Air-Ground Services); *In the Matter of Amendment of Part 97 of the Commission's Rules to Authorize Time Division Multiplex Emission in the Amateur Service*, 7 FCC Rcd 6547 (1992) (dismissing without prejudice a petition to amend the amateur service rules since protocol standards for TDM in the amateur service had not been developed and warranted study by the amateur community); and *In the Matter of Amendment of Parts 2 and 94 of the Commission's Rules to Allocate Spectrum in the 986-901 MHz and 935-940 MHz Frequency Bands for Multiple Address System and Point-to-Point Operations*, 4 FCC Rcd 4979 (1989) (dismissing without prejudice petition to amend the rules governing use of 200 channel pairs in identified bands indicating that it was too early in the licensing process to assess whether the channels should be reallocated for other purposes).

CONCLUSION

In view of the foregoing, HBO urges the Commission to dismiss the Skybridge petition without prejudice to its refiling at such time as Skybridge and affected GSO satellite industry members have conducted further analysis and tests and reached some understanding regarding the feasibility of the NGSO/GSO frequency sharing proposal advanced by Skybridge.

Respectfully submitted,

**HOME BOX OFFICE, A Division of
TIME WARNER ENTERTAINMENT
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By: 
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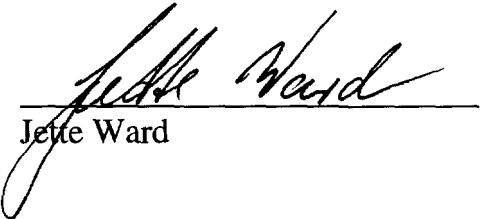
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August 27, 1997

CERTIFICATE OF SERVICE

I, Jette Ward, a secretary with the law firm Reed Smith Shaw & McClay LLP, hereby certify that on this 27th day of August, 1997, I have caused to be delivered the foregoing **“COMMENTS ON PETITION FOR RULEMAKING”** by first class mail, postage prepaid, to the following persons:

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